

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM LEXINGTON

COURT OF COMMON PLEAS

RECEIVED

NOV 20 2014

S.C. SUPREME COURT

Case No. 2011-CP-320488

Perry Watford 289215 Appellant

vs.

State of South Carolina Respondent

NOTICE OF APPEAL

Perry Watford appeals the order [judgment] and Order against the Reconsideration of the Honorable William P. Keesley dated OCTOBER 22, 2014. Appellant received written notice of entry of this order [judgment] on OCTOBER 30, 2014.

s/ Perry Watford 289215
Perry Watford 289215
Allendale C.I. F4A40
P.O. Box 1151
Fairfax SC 29827
Appellant pro-se

Other Counsel of Record:
Lexington County Clerk of Court,
Walt Whitmire, Asst. Atty General
P.O. Box 11549
Columbia, S.C. 29211-1549

Dated November 17, 2014.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

CASE NO.: 2011-CP-32-0488

Perry Watford 289215 Appellant

vs.

state of South Carolina Respondent

PROOF OF SERVICE

I certify that I have served the NOTICE OF APPEAL ON
Lexington County Court of Common Pleas by depositing a copy
of it in the United States Mail, postage prepaid on November,
17, 2014. addresses as following:

cc: other counsel of Records:
Lexington County Clerk of Court
Walt Whitmire, Asst. Atty. General
P.O. Box 11549
Columbia, S.C. 29211-11549

Perry Watford 289215
Perry Watford 289215
Allendale C.I. F4-A40
P.O. Box 1151
Fairfax, S.C. 29827
Appellant, pro-se

Date November 17, 2014

STAMP LABEL

The Honorable Beth A. CARRIGG
Clerk of Court for Lexington County
205 East Main Street.
Lexington, S.C. 29072

Re: Perry Watford 289215 vs. state of South Carolina
Case No: 2011-CP-32-0488

Dear Ms. CARRIGG,
Enclosed for filing a notice of appeal
in the above case.

cc: Walt Whitmire
Asst. Atty. General
P.O. Box 11549
Columbia, S.C. 29211-1549
Respondent.

Perry Watford 289215
Perry Watford 289215
Allendale C.I. F4-A40
P.O. Box 1151
Fairfax, S.C. 29827
Appellant, pro-se

Date November 17, 2014

STATE OF SOUTH CAROLINA) FILED)
COUNTY OF LEXINGTON) IN THE COURT OF GENERAL SESSIONS

2014 OCT -9 A 11:27

PERRY WATFORD, #289215,

Applicant,)
-vs-)
BETH A. CARRIGG)
CLERK OF COURT)
LEXINGTON, SC)

ORDER DENYING MOTION
FOR RECONSIDERATION

STATE OF SOUTH CAROLINA,)

Defendant.)

Indictment Number: 2011CP3204880

The applicant seeks to have the court reconsider and to alter, amend, or vacate its order of September 11, 2014, which dismissed this PCR action following a conditional order of dismissal issued by The Honorable Thomas A. Russo. The court sees no need for further briefing under Rule 59(f), SCRPC, or a hearing. The motion is denied.

WPK
#1

The applicant pleaded guilty before The Honorable Marc H. Westbrook on December 3, 2002. He received a 25-year sentence for leaving the scene of an accident involving death, a 10-year sentence for assault and battery of a high and aggravated nature, and a sentence of 9 years on a probation violation. The sentences were run concurrently.

An appeal was filed, but it was withdrawn. The Remittitur was issued on April 30, 2004.

On June 3, 2004, the applicant filed his first PCR case. He alleged ineffective assistance of counsel, including a claim of failing to properly give him legal advice. PCR counsel was appointed, and an order issued on August 9, 2006, denying the application. An appeal was taken, and the petition was denied, with a remittitur issued on May 20, 2008.

According to the current PCR filing, Mr. Watford was pursuing relief in federal court when he first learned that a plea offer had been extended to the attorney who represented him on

the underlying charges. He recites that his family knew of this plea offer, but that he was not told of it until "around June 2010." He indicates that he tried to raise the issue in the federal court proceeding, but was told that he must exhaust his remedies in state court. His current PCR application recites that his petition for writ of habeas corpus in federal court was denied on March 11, 2010. Giving him the benefit of the doubt and assuming that he did not learn about the plea offer until around June, he still did not meet a one-year statute of limitations. He did not file the current PCR application until December 20, 2011.

In support of his reconsideration motion, he has provided the court with a copy of the same affidavit that he attached to the current PCR application. It is executed by various family members, dated May 21, 2010, and it states that the attorney who represented the applicant at the plea stage advised the family during the negotiations with the State that the attorney had turned down an offer of 15 years. Also, in support of the motion for reconsideration, the applicant has filed a brief. The court has considered all the submissions.

WPM
#2

The initial argument is that the applicant filed a motion for enlargement of time, seeking 30 additional days in which to respond to the conditional order of dismissal, and he claims that he was waiting on a ruling from the court on that motion before making his submissions. First, as previously noted, the conditional order of dismissal filed by Judge Russo gave the applicant 20 days in which to file a notice of objection. He did not file the request for an extension of time until after the 20 days had elapsed. Secondly, the court did not issue the final order until well over twice the time requested. Mr. Watford asserts that he mailed his objections on September 3, 2014, though waiting on a ruling on his request for additional time. While those are not timely, the court has now considered everything that the applicant has submitted. The court finds nothing in them that would justify vacating, altering, or amending the prior order.

Mr. Watford filed this second PCR action on December 20, 2011. He indicates that he was not advised by his attorney of a plea bargain of imprisonment for 15 years. He eventually received a 25-year sentence, and he maintains that he would have accepted the plea offer, had he been told. Had that issue been raised in a timely fashion, and if the claim had been proven, the court agrees that it could constitute grounds for granting a PCR application. The problem for Mr. Watford here is that he did not raise the issue in a timely fashion.¹

The conditional order of dismissal was signed by Judge Russo because he was the Chief Judge for Administrative Purposes for Common Pleas at the time. The assignment changed, and the undersigned judge assumed that role on July 1, 2014. That appears to be the same day that the request for an extension of time was filed, having been mailed earlier. The request was for an additional 30 days. It is the applicant's claim that he was waiting to file anything regarding his objection until he heard back about whether the request was "granted or denied." That argument assumes that the court would grant the motion, because if it were denied, the time would have run. It was not reasonable for the applicant to wait until the end of the 20 days to make the request, and it was even less reasonable to wait to hear back before sending any submissions.

What the court has done is to give the applicant far more than he requested. The order was not issued for over 2 months after the motion for enlargement of time was filed (July 1 to

¹ There is also a question about the timeliness of the reconsideration motion. There is a strict 10-day limit on filing such motions. Mr. Watford had previously written to the court regarding the status of the case by a letter postmarked September 10, 2014. The court responded to him on September 18, 2014, indicating that the order had already been signed and filed, and that he should receive a copy of it from the Clerk of Court. He was told in that letter that he could seek reconsideration, if he had additional information that he had not supplied. In his motion for reconsideration, he recites that he received the response from the court on September 22, 2014, but he does not indicate when he received a copy of the order. The order was filed on September 12, 2014. The 10-day period would begin to run when Mr. Watford received his copy of the order. His motion for reconsideration is dated September 30, 2014, but the copy sent to the court is postmarked October 2, 2014. If the motion was mailed for filing with the Clerk of Court on October 2, that probably would be out of time. Nonetheless, the court has considered the motion as having been filed in a timely fashion.

WAL
#3

September 11, 2014). Even after the issuance of the order, the court has allowed the applicant to provide submissions to support his contention that the issue can be raised at this point. It is this court's finding that the current PCR application must be dismissed because it was not filed within the one-year statute of limitations, even if the court accepts everything that the applicant has asserted as being true and if the court applies a discovery rule that the applicant first learned of the uncommunicated plea offer around June 2010.

The court has also considered the information supplied by the applicant regarding his status as an inmate. It has considered the restrictions imposed upon inmates' ability to receive, prepare, and file legal documents. It has considered the repeated assertion by the applicant that he is acting pro se and needed additional time because of that fact.

Section 17-25-45, S.C. Code Ann., reads, in part:

(A) An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later. . . .

(C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

Section 17-27-70 provides, in part:

(b) When a court is satisfied, on the basis of the application, the answer or motion, and the record, that the applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and its reasons for so doing. The applicant shall be given an opportunity to reply to the proposed dismissal. In light of the reply, or on default thereof, the court may order the application dismissed or grant leave to file an amended application or direct that the proceedings otherwise continue. Disposition on the pleadings and record is not proper if there exists a material issue of fact.

(c) The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions and admissions and

WPH
#4

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agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

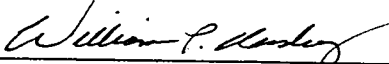
CONCLUSION

Having reconsidered the matter, the court finds that there is no reason to modify the September 11, 2014 order regarding findings that the present PCR application is impermissibly successive. As previously stated, the application is also barred by the statute of limitations. The court finds that no purpose would be served by further proceedings. There is no genuine issue of material fact concerning the procedural bars, and the State is entitled to judgment as a matter of law.

#5
THEREFORE, IT IS ORDERED that the motion to alter, amend, or vacate the September 11, 2014 order, after reconsideration, is denied. The applicant is cautioned that there are strict time limits applicable to any appeal from this order, and that a notice of appeal would have to be filed in the appropriate appellate court within the time limit.

AND IT IS SO ORDERED.

October 7, 2014



William P. Keesley, Judge

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2014 OCT -9 A 11:20

FILED

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF LEXINGTON
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2011CP3204880

Perry L Watford #289215

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

10/22/2014

Date

For Clerk of Court Office Use Only

This judgment was entered on **22nd of October 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **22nd of October 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Perry L Watford #289215 Broad River Corr Inst Murray 143
Broad River Rd Columbia, SC 29210

J Walt Whitmire SC Attorney Generals Office

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

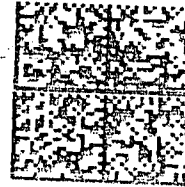
Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Lexington County
Clerk of Court's Office
Common Pleas
205 East Main Street
Lexington, SC 29072 MH



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OCT 28 2014

KIRKLAND H&E CENTER
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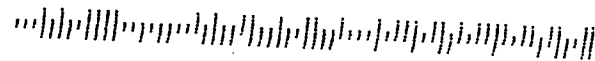
Perry Watford #289215
Broad River Correctional Institution
4344 Broad River Road
Columbia, SC 29210

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OCT 30 2014

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ORIGINAL

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON) 2014 SEP 12 AM 8:11
) ELEVENTH JUDICIAL CIRCUIT
) BETH A. GARRIGG 2011
) CLERK OF COURT Case No. 2013-CP-32-4880
) LEXINGTON SC

Perry L. Watford,)
 S.C.D.C. 289215,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

FINAL ORDER

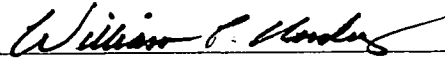
This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed December 20, 2011. The Respondent (the State) made its Return and Motion to Dismiss on July 11, 2012 requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, a Conditional Order of Dismissal was issued on July 19, 2013, and filed August 15, 2013, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is a certification of service, serving the above-mentioned Conditional Order of Dismissal on the Applicant. A copy of the signed Conditional Order of Dismissal was mailed to Applicant on August 21, 2013.

Applicant issued a *pro se* document titled "motion for enlargement of time pursuant to rule 6(b), SCRCP" on June 27, 2014 over a week past the appropriate time to make a response. In Summary, Applicant requested a thirty day (30) day extension to research and prepare a response to the Conditional Order.

Three months have passed since the issuance of the Conditional Order, and two months have since ~~past~~ ^{PASSED (was)} since Applicant prayed for a (30) day extension to make his response. Currently, Applicant has yet to make a substantive response to the Conditional Order. This Court has reviewed the original pleadings and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth here and in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

AND IT IS SO ORDERED this 11TH day of SEPT., 2014.

#2

WILLIAM P. KEESLEY
Chief Administrative Judge
Eleventh Judicial Circuit

STATE OF SOUTH CAROLINA
 COUNTY OF LEXINGTON
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2011CP3204880

Perry L Watford #289215

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
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 Rule 43(k), SCRPC (Settled); Other: _____
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 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

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The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

9/12/2014
 Date

For Clerk of Court Office Use Only

This judgment was entered on **15th of September 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **15th of September 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Perry L Watford #289215 Broad River Corr Inst Murray 143
Broad River Rd Columbia, SC 29210

J Walt Whitmire SCAG office

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

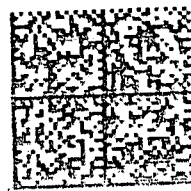
This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

COUNTY OF LEXINGTON
BETH A. CARRIGG
CLERK OF COURT
Lexington County Judicial Center
205 East Main Street
Lexington, S.C. 29072

Handwritten: @ Perry
CI

Handwritten: CMM

Barry L Watford #289215
Broad River Corr Inst Murray
143 Broad River Rd
Columbia, SC 29210



Hasler

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\$00.480
09/22/2014
Mailed From 29072
US POSTAGE

RECEIVED

Handwritten signature: [Signature]

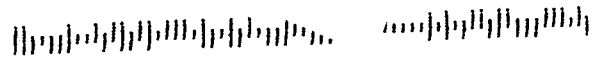
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SEP 25 2014

P.C.I. MAILROOM

Handwritten: 10 days would be Oct 5, 2014 Sunday

2921034047 0077



The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, S.C. 29211

Re: Perry Watford 289215 vs. State of South Carolina
case no. 2011-CP-32-0488

Dear Mr. Shearouse

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

1.) Proof of service of the Notice of appeal on the respondent.

2.) A copy of the order's [judgments] which are to be challenged on appeal.

3.) This appeal is being filed with the Supreme Court because, Rule 203(d) SCACR.

cc: Lexington County Clerk of Court
Walt Whitmore Asst. Atty. General
P.O. Box 11549
Columbia, S.C. 29211-1549

Perry Watford 289215
Perry Watford 289215
Allendale C.I. F4-A40
P.O. Box 1151
Fairfax, S.C. 29827
Appellant; pro-se

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NOV 20 2014

S.C. SUPREME COURT

Date: November 17, 2014

Perry Watford 289215

Allendale C.I. F4-A40

P.O. Box 1151

Fairfax, S.C. 29827

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, S.C. 29211

RECEIVED

NOV 17 2014

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AGI